IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5528 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANIBEN KHUSHALBHAI PATEL
THRO' DAUGHTER SITABEN KHUSHALBHAI
Versus
COMMISSIONER OF POLICE

Appearance:
MR NM KAPADIA for Petitioner
MR HN SOMPURA AGP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 15-5-2000, passed by

the Police Commissioner, Surat, and she has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner has submitted that the detaining authority has relied upon C.R. No.229/98 registered at Prohibition Station (South). Looking to the papers supplied to the detenu regarding the said case, it is clear that statement of Police Constable Jashvant Navrabhai was recorded and, therefore, it was required to be placed before the detaining authority and it was required to be supplied to the detenu. However, it is not done and, therefore, the subjective satisfaction of the detaining authority is vitiated as well as the right of the detenu to make effective representation is affected. Over and above, the petitioner sent a request letter dated 7-6-2000 to the Secretary, Home Department, whereby the petitioner specifically demanded statement of Police Constable Virsinh recorded by the Investigating regarding C.R.No.38/98 and other documents, but the same have not been supplied to the petitioner till today and, therefore, it affected the right of the petitioner to make effective representation.

4. Learned A.G.P. Mr.H.N.Sompura has drawn attention of this Court to the affidavit in reply filed by the respondent No.1-Commissioner of Police, Surat City, wherein paragraph 15 he has specifically averred as under :

> " With reference to paras 2 (32) and (33) of the memo of petition are concerned, I say and submit that under the registered offence C.R.No.38 of 1998 in connection with Southern part of Prohibition Station, the statement of Jamadar Virsing who is P.S.O., are not necessary and, therefore, it is not taken into consideration. Also, C.R.No. 229 of 1998 in connection, the statement of Police Constable Navranbhai is not taken into consideration, therefore, there is no question of supply the copy of the same. Hence, what is stated by the petitioner should not be taken into consideration."

5. Relying upon the same, learned A.G.P. Mr. H.N.Sompura has argued that the petitioner is not entitled to get the copy of the statements of the above witnesses.

6. Learned counsel for the petitioner has placed reliance on a decision reported in 1991 (1) G.L.H. 346 Jeeva Veiyapuri Madrasi v.Commissioner of Police, Ahmedabad, and another wherein it is held as under.

> " In the affidavit-in-reply it has been stated that the statement of witnesses which were recorded by the investigation agency were not considered to be relevant or material for the purpose of being satisfied that the petitioner whose name is very much disclosed in the FIR itself, was involved in the nefarious activities which were found to be prejudicial to the maintenance of 'public order'. Without looking at the statements the detaining authority cannot say whether they are irrelevant or otherwise. Therefore, that part of the statement made by the detaining authority cannot be accepted. It was incumbent upon the detaining authority to consider the statement recorded under S. 161 of the code by the police during the investigation of the offences for which the charge-sheet were already placed before him. In absence of the said statements the satisfaction arrived at by the detaining authority is vitiated and therefore, the whole order of detention is vitiated.

7. In view of the above position, I am of the opinion that the detaining authority failed to supply relevant documents to the detenu for making an effective representation which has infringed the detenu's right under Article 22 (5) of the Constitution.

8. Since the petitioner succeeds only on this point, learned advocate for the petitioner does not press any other points.

9. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 15-5-2000 passed against the detenu is hereby quashed. The petitioner-detenu Maniben Khushalbhai Patel is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.Dholakia, J.)

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